

Sixth Appellate District

San Jose, California

TUESDAY, JANUARY 18, 2005

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Bamattre-Manoukian, Acting P.J.; Mihara, J.; McAdams, J.; and Jane Valdez Flor, Deputy Clerk.

H025643 PEOPLE v. ZAVALA

Cause called and argued by Meredith Fahn appearing for Appellant and by Allan Yannow, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027339 PEOPLE v. LY

Cause called and argued by Jeremy D. Blank appearing for Appellant and by Allan Yannow, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027003 PEOPLE v. RICARDO S.

Cause called and argued by Gordon B. Scott appearing for Appellant and by Christopher Grove, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027005 PEOPLE v. MENDEZ, SR.

Cause called and argued by Maribeth Halloran appearing for Appellant and by Jill M. Thayer, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027475 MADRIAGA, et al. v. FINANCIAL INDEMNITY, INC.

Cause called and argued by John A. Shepardson appearing for Appellants and by Kevin Hunter Park appearing for Respondent. Cause ordered submitted.

Court recesses until 1:30 p.m.

H026158 PEOPLE v. WALSH

The judgment is affirmed. (not published)
(Premo, J.; We concur: Rushing, P.J., Elia, J.)
Filed January 18, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Elia, Acting P.J.; Bamattre-Manoukian, J.; McAdams, J.; and Beth Miller, Deputy Clerk.

Sixth Appellate District

San Jose, California

Tuesday, January 18, 2005 (continued)

H025958 LOCKTON v. SMALL, et al.

Cause called and argued by Guy O. Kornblum appearing for Appellant and by John Pernick and David Balabanian appearing for Appellants. Cause ordered submitted.

Bamattre-Manoukian, J. leaves the bench and Mihara, J. takes the bench.

H027439 VERITY, INC. v. OMEN, INC.

Cause called and argued by Perry J. Narancic appearing for Appellant and by Jeffrey F. Ryan appearing for Respondent. Cause ordered submitted.

Elia, Acting P.J. leaves the bench and Bamattre-Manoukian, Acting P.J. takes the bench.

H026666 ROYAL POOLS OF SANTA CLARA, INC. v. MARCUS

Cause called and argued by Michael Joseph Melton appearing for Appellant and by Joseph L. Naegele appearing for Respondent. Court is adjourned.

H027146 In re TIFFANY G., et al.; DFCS v. JULIE V.

By the Court:

On the court's own motion, the submission order in the above-entitled matter dated December 16, 2004, is hereby vacated. This matter will be consolidated with case Nos. H027441, In re Jimmy V., a minor and H027956, In re Jimmy V., et al., minors for decision. This matter will be resubmitted at the same time as H027441 and H027956.

Dated: January 18, 2005 Premo, Acting P.J.

WEDNESDAY, JANUARY 19, 2005

H027529 In re TIFFANY G., et al.; DFCS v. JULIE V.

By the Court:

Upon the court's own motion, the submission order in the above-entitled matter dated December 16, 2004, is hereby vacated. The matter will be consolidated with case Nos. H027146, H027741 and H027956 for decision. The cause will be resubmitted no later than January 21, 2005, pursuant to rule 37.4(g)(3), California Rules of Court.

Dated: January 19, 2005 Premo, Acting P.J.

Sixth Appellate District

San Jose, California

THURSDAY, JANUARY 20, 2005

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Premo, J.; Mihara, J.; and W. Magsaysay, Deputy Clerk.

H026596 PEOPLE v. BIRREY

Cause called and argued by Paul Couenhoven appearing for Appellant and by Joan Killeen, Deputy Attorney General, appearing for Respondent. Cause ordered submitted. Thereafter, the panel is changed as follows: Premo, J. and Mihara, J. leave the bench and McAdams, J. and Walsh, J.* take the bench for the remainder of the calendar.

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H026703 PEOPLE v. MOSLEY

Cause called and argued by Brian A. Pori appearing for Appellant and by Gregg E. Zywicke, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H026974 MARRIAGE OF RAJAPPAN AND GAHTE-RAJAPPAN

Cause called and argued by Russell J. Hanlon appearing for Appellant and by Bernard N. Wolf appearing for Respondent. Cause ordered submitted. Court recesses until 1:30 p.m.

H026351 SALYER, as Trustee, etc. v. SALYER, et al.

By the Court:

Respondent's petition for rehearing is denied.

Filed: January 20, 2005

(Mihara, J. and McAdams, J. participated in this decision.

Bamattre-Manoukian, Acting P.J. would grant rehearing.)

H027378 In Re DAVID W.; DFCS v. DAVID B.; DAVID W., et al.

The appeals are dismissed as moot. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed January 20, 2005

H026824 NGUYEN v. CALHOUN, et al.

We reverse the order of October 27, 2003, which awards attorney fees of \$109,004.41 plus costs of \$677.32. We remand this matter to the trial court with directions to enter an order awarding defendants only their costs of \$677.32. (not published)

(McAdams, J.; We concur: Premo, Acting P.J., Mihara, J.)

Filed January 20, 2005

Sixth Appellate District

San Jose, California

Thursday, January 20, 2005 (continued)

H026748 PEOPLE v. ALVARADO

The judgment is affirmed. (not published)
(Mihara, J.; We concur: Rushing, P.J., Elia, J.)
Filed January 20, 2005

H024128 PEOPLE v. WONG

By the Court*:

Appellant's petition for rehearing is denied.
Filed: January 20, 2005
*Before Rushing, P.J., Premo, J. and Elia, J.

H027084 CHAUDHARY on Habeas Corpus

The judgment is affirmed. (not published)
(Mihara, J.; We concur: Rushing, P.J., Premo, J.)
Filed January 20, 2005

H026788 PEOPLE v. REDDS

By the Court*:

Appellant's petition for rehearing is denied.
Filed: January 20, 2005
*Before Elia, Acting P.J., Bamattre-Manoukian, J. and Mihara, J.

FRIDAY, JANUARY 21, 2005

H027578 PEOPLE v. ORTA

The judgment is reversed. The matter is remanded to the trial court with instructions to vacate its previous order that directed defendant to pay \$500 in attorney fees and to conduct further proceedings consistent with Penal Code section 987.8. The remainder of the judgment is unaffected by this decision. (not published)
(Elia, J.; We concur: Rushing, P.J., Premo, J.)
Filed January 21, 2005

Sixth Appellate District

San Jose, California

Friday, January 21, 2005 (continued)

H024089 DENEVI v. GREEN VALLEY CORPORATION, et al.

H024292 DENEVI v. GREEN VALLEY CORPORATION, et al.

H024293 DENEVI v. GREEN VALLEY CORPORATION, et al.

H024374 DENEVI v. GREEN VALLEY CORPORATION, et al.

H025206 DENEVI v. GREEN VALLEY CORPORATION, et al.

The judgment (H024089) is affirmed as to liability of defendants but is reversed for a retrial on the issue of general damages only. Each party is to bear his or its own costs for this appeal. Plaintiff's appeal from the order denying plaintiff's motion for prejudgment interest (H024292) is dismissed as moot. Each party is to bear his or its own costs for this appeal. Plaintiff's appeal from the order denying plaintiff's motion for contractual attorney fees (H024293) is dismissed as moot. Each party is to bear his or its own costs for this appeal. Plaintiff's appeal from the order denying plaintiff's motion for reconsideration (H024374) is dismissed as moot and because it appeals from a nonappealable order. Each party is to bear his or its own costs for this appeal. Plaintiff's appeal from the order denying plaintiff's motion for common-fund attorney fees (H025206) is dismissed as moot. Each party is to bear his or its own costs for this appeal. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed January 21, 2005

H027379 PEOPLE v. OTTINGER

The judgment is affirmed. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed January 21, 2005

H027569 PEOPLE v. GREGORY V.

H027543 DFCS v. LINDSAY B.

H07787 PEOPLE v. SETTLE

The cause herein is ordered submitted.

Dated: January 21, 2005

RUSHING, P.J.

Sixth Appellate District

San Jose, California

Friday, January 21, 2005 (continued)

H027605 DFCS v. JOSEPH B., et al.

H027081 PEOPLE v. SAVALZA

H027603 PEOPLE v. LUNA

H027834 PEOPLE v. CHEATHAM

H026850 PEOPLE v. DAVIS

H026231 PEOPLE v. ROWAN

H027572 PEOPLE v. FRANCISCO M.

H027841 DFCS v. DULCIE P.

The cause herein is ordered submitted.

Dated: January 21, 2005 BAMATTRE-MANOUKIAN, Acting P.J.

H026775 MCDONNELL v. MCBRIDE, et al.

(Filed order modifying opinion.) There is no change in the judgment. Appellants' petition for rehearing is denied and the request for publication is denied. (not published)

(McAdams, J.; Elia, Acting P.J.; Bamattre-Manoukian, J.)

Filed January 21, 2005

H026936 PEOPLE v. CRUZ

The judgment is affirmed. The clerk of the superior court is ordered to modify the abstract of judgment as stated above. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed January 21, 2005

H026801 PEOPLE v. DO

The judgment is hereby modified to (1) award defendant 360 days of pre-sentence conduct credit under Penal Code section 4019 and (2) stay, pursuant to Penal Code section 654, the concurrent terms imposed for the conspiracy and transportation counts. The trial court is directed to prepare an amended abstract of judgment reflecting these modifications of the judgment and to forward a certified copy of the amended abstract to the Department of Corrections. The modified judgment is affirmed. (not published)

(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed January 21, 2005

Sixth Appellate District

San Jose, California

Friday, January 21, 2005 (continued)

H027090 IN RE LYNN ALAGAO ALVARADE ON HABEAS CORPUS

That portion of the superior court's order of February 4, 2004, in which the court stated: "The Board [of Prison Terms] is precluded from relying on any of the purported reasons previously articulated as outlined above" is stricken. As modified, the order granting defendant's petition for writ of habeas corpus, directing the Board to proceed in accordance with due process and to issue a new decision within 45 days, is affirmed.

The writ of supersedeas staying the order of the superior court shall dissolve upon issuance of the remittitur. The time within which the Board must issue a new decision shall commence upon dissolution of the stay. (not published)

(Premo, Acting P.J.; I concur: Walsh, J.*; Concurring and dissenting opinion by Bamattre-Manoukian, J.)

Filed January 21, 2005

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H027461 MARRIAGE OF ASTER

The order is affirmed. (not published)

(Elia, J.; We concur: Premo, Acting P.J., Premo, J.)

Filed January 21, 2005